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	TUESDAY, MAY 26, 1987		1/81
S.B. 279	S.B. 660	S.B. 1002	S.B. 1388
S.B. 281	S.B. 698	S.B. 1011	S.B. 1395
S.B. 292	S.B. 719	S.B. 1037	S.B. 1417
S.B. 293	S.B. 756	S.B. 1084	S.B. 1418
S.B. 321	S.B. 763	S.B. 1150	S.B. 1419
S.B. 382	S.B. 764	S.B. 1151	S.B. 1431
S.B. 390	S.B. 803	S.B. 1160	S.B. 1460
S.B. 474	S.B. 807	S.B. 1162	
S.B. 484		S.B. 1207	

# SIXTY-SIXTH DAY (Wednesday, May 27, 1987)

The Senate met at 9:30 a.m., pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Henderson, Johnson, Jones, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sims, Tejeda, Uribe, Washington, Whitmire, Zaffirini.

Absent-excused: Truan.

A quorum was announced present.

The Reverend Tom Huser, First Presbyterian Church, Lake Jackson, offered the invocation as follows:

Lord, God, our Father, we offer our thanksgiving for this beautiful day. We thank You for the freedom we have as American people to come together in counsels of law and judgment, to celebrate the freedom we have by exercising decisions, by voting and taking actions. We pray, our Father, for Your leadership, that all things that are said and done may be according to Your will and for the best interest of all Your people. Bless us now with wisdom, with understanding, with courage and, yet, compassion, that we may reflect Your love through Jesus Christ our Lord. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

## LEAVE OF ABSENCE

Senator Truan was granted leave of absence for today on account of illness on motion of Senator Brooks.

# **BILLS AND RESOLUTION SIGNED**

The President announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bills and resolution:

> S.J.R. 34 17 S.B. S.B. 336 S.B. 341

S.B. 402 S.B. 669 S.B. 817 S.B. 988 S.B. 1348

# MESSAGE FROM THE HOUSE

House Chamber May 27, 1987

HONORABLE W. P. HOBBY PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House has refused to concur in Senate amendments to H.J.R. 3, and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Schlueter, Chairman; L. Evans, McKinney, Taylor and Holzheauser.

- H.J.R. 41, Proposing a constitutional amendment to create a fire department emergency fund and to authorize the state to provide scholarships, grants, loans, and other financial assistance to local fire departments and other public fire-fighting organizations in the state using funds collected from gross premiums taxes on fire insurance.
- H.J.R. 60, Proposing a constitutional amendment to raise the maximum property tax rate that may be adopted by rural fire prevention districts.
- H.B. 888, Relating to the continuation, powers, and duties of the Texas Board of Private Investigators and Private Security Agencies.
- H.B. 2495, Relating to the size of a class in which certain primary school children are enrolled.
- H.B. 1937, Relating to authorizing a public utility to self-insure all or part of its potential tort liability and losses from windstorm, fire, explosion, workers' compensation, or any other class casualty loss; providing for creation of appropriate reserve accounts and consideration of those accounts for rate making purposes; and declaring an emergency.
- S.B. 1387, Relating to handling protest payments of taxes imposed on certain types of insurance business.
- S.B. 1184, Relating to registering a motor vehicle utilizing an electronic off-premises location.
- S.B. 1518, Relating to the creation, administration, powers, duties, operations, fiscal procedures, and annexation authority of the Anderson County Underground Water Conservation District.
- S.B. 583, Relating to the authority of a county to regulate the discharge of firearms in the unincorporated area of the county; providing a criminal penalty. (Amended)
- S.B. 229, Relating to the regulation of certain telecommunications carriers. (Substituted and amended)
- S.B. 525, Relating to fees imposed on physical therapists by the Texas Board of Physical Therapy Examiners.

- **S.B.** 976, Relating to emergency services under certain insurance policies and coverage of health maintenance organizations.
- S.B. 522, Relating to gasoline tax credits for gasoline and alcohol mixtures. (Amended)
- S.B. 199, Relating to the regulation of certain activities concerning portable fire extinguishers and fixed fire extinguisher systems, fire detection and fire alarm devices and systems, fire protection sprinkler systems, and fireworks.
- S.B. 323, Relating to the creation of the On-site Wastewater Treatment Research Council and fund and the imposition of certain fees. (Amended)
- S.B. 819, Relating to licensing and renewal of licenses of nursing homes. (Amended)
- S.B. 473, Relating to removal of the property and warehouseman's lien on property of an evicted tenant. (Substituted and amended)
- **S.B.** 765, Relating to the sale or exchange of land by the Parks and Wildlife Department.
  - S.B. 930, Relating to an affidavit of inability to pay costs in a civil case.
- S.B. 1055, Relating to the abatement of public nuisances in certain counties; providing civil and criminal penalties. (Amended)
- S.B. 1360, Relating to rules requiring the use of Stage II vapor recovery systems at gasoline dispensing facilities in this state.
- S.B. 687, Relating to the administration and management of certain courts, the compensation, education requirements, and assignment of certain judges, and certain duties of the attorney general. (Amended)

The House has concurred in Senate amendments to **H.B.** 782 by a record vote of 143 yeas, 0 noes, 1 present-not voting.

The House has concurred in Senate amendments to H.B. 1942 by a record vote of 143 yeas, 0 noes, 1 present-not voting.

The House has concurred in Senate amendments to **H.B. 1614** by a record vote of 134 yeas, 0 noes, 1 present-not voting.

The House has concurred in Senate amendments to **H.B.** 624 by a vote of 133 ayes, 0 noes, 2 present-not voting.

The House has concurred in Senate amendments to **H.B.** 788 by a vote of 126 ayes, 0 noes, 1 present-not voting.

The House has concurred in Senate amendments to H.B. 1710 by a vote of 135 ayes, 0 noes, 1 present-not voting.

The House has concurred in Senate amendments to **H.B. 2466** by a vote of 136 ayes, 0 noes, 1 present-not voting.

The House reconsidered the vote by which the House refused to concur in Senate amendments to **H.B.** 2308 by a non-record vote. Motion to discharge the Conference Committee and concur in Senate amendments to **H.B.** 2308 prevailed by a record vote of 129 ayes, 0 noes, 1 present-not voting.

The House refused to concur in Senate amendments to H.B. 685 and has requested the appointment of a Conference Committee to consider the differences between the two Houses. House Conferees: T. Smith, Chairman; S. Johnson, Ovard, Arnold and Waterfield.

The House has concurred in Senate amendments to the following bills by a non-record vote:

H.B. 339 H.B. 683 H.B. 943 H.B. 1364 H.B. 1977 H.B. 2187

Respectfully,

BETTY MURRAY, Chief Clerk House of Representatives

# REPORTS OF STANDING COMMITTEES

Senator Uribe, Vice-Chairman, submitted the following report for the Committee on Health and Human Services:

C.S.S.C.R. 142

Senator Zaffirini, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

H.B. 1469 H.B. 2030

Scnator Brooks submitted the following report for the Committee on Health and Human Services:

H.B. 177 H.B. 814 (Amended) C.S.S.C.R. 139 C.S.H.B. 500

Senator Jones submitted the following report for the Committee on Finance:

H.B. 2572 H.B. 1440 H.B. 1163 H.B. 529

Senator Blake submitted the following report for the Committee on Administration:

H.C.R. 182 H.C.R. 148

Senator McFarland submitted the following report for the Committee on Criminal Justice:

C.S.H.B. 1622 C.S.S.B. 1342 C.S.H.B. 2403 H.B. 554 (Amended) C.S.H.B. 587 C.S.H.B. 957 H.B. 1325 H.B. 1806 H.B. 2575 H.B. 2576 Senator Parmer submitted the following report for the Committee on Intergovernmental Relations:

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C.S.H.B. 1006
H.B. 2602
H.B. 2316
H.B. 1950
H.B. 2567
C.S.H.B. 1675
H.B. 2585
H.B. 2586
H.J.R. 35
H.B. 1927
H.B. 1368
H.B. 1933
H.B. 2598
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Senator Parker submitted the following report for the Committee on Education:

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H.B. 391 (Amended)
H.B. 1217
H.B. 629
H.B. 1271
H.B. 176
H.B. 2347
H.B. 2281
H.B. 1831
H.B. 1886
H.B. 1269
H.B. 1483
H.B. 2219
H.C.R. 168
C.S.H.C.R. 107
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Senator Caperton submitted the following report for the Committee on Jurisprudence:

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C.S.H.B. 1213
C.S.H.B. 440
H.B. 579
H.B. 2604
C.S.H.B. 614
H.B. 2486
C.S.H.B. 538
H.B. 812
H.B. 1742
H.B. 323
S.B. 1545
H.B. 1150
H.B. 2584 (Amended)
H.B. 573 (Amended)
H.B. 559
C.S.H.B. 705
H.B. 750
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# H.B. 696 (Amended) C.S.H.B. 742

Senator Edwards submitted the following report for the Committee on Nominations:

We, your Committee on Nominations, to which were referred the attached appointments, have had same under consideration, and report them back to the Senate for final consideration.

To be a Member of the COMMISSION ON JAIL STANDARDS: Ivy T. Corley, Randall County.

To be a Member of the TEXAS BOARD OF MENTAL HEALTH AND MENTAL RETARDATION: Mrs. Pattilou Dawkins, Randall County.

To be a Member of the BOARD OF REGENTS, TEXAS TECH UNIVERSITY: Claude Carey Hobbs, McLennan County.

To be a Member of the BOARD OF DIRECTORS, STATE BAR OF TEXAS: Mrs. Evelyn P. Bonavita, Travis County. (Appointed by Supreme Court of Texas)

To be Members of the STATE BOARD OF DENTAL EXAMINERS: Dr. Roger P. Byrne, Nueces County; Dr. Ronald Hughes Shamblin, Jasper County.

# NOTICE OF CONSIDERATION OF NOMINATIONS

Senator Edwards gave notice that he would tomorrow at the conclusion of Morning Call submit to the Senate for consideration nominations to agencies, boards and commissions of the State.

# SENATE RESOLUTIONS ON FIRST READING

On motion of Senator Sarpalius and by unanimous consent, the following resolutions were introduced, read first time and referred to the Committee indicated:

S.C.R. 143 by Barrientos

Granting Bill R. Corbell permission to sue the State of Texas and the State Purchasing and General Services Commission.

S.C.R. 144 by Barrientos

Granting Troyt B. York permission to sue the State of Texas and The University of Texas System.

S.R. 648 by Sarpalius

Natural Resources
Directing the Subcommittee on Agriculture of the Committee on Natural Resources
to conduct an interim study of the State's natural fiber industry and the meat
packing industry.

## HOUSE BILL ON FIRST READING

The following bill received from the House was read the first time and referred to the Committee indicated:

H.B. 1937, To Committee on Economic Development.

#### CO-SPONSORS OF HOUSE JOINT RESOLUTION 35

On motion of Senator Anderson and by unanimous consent, Senators Truan and Armbrister will be shown as Co-sponsors of H.J.R. 35.

#### **CO-SPONSOR OF HOUSE BILL 1183**

On motion of Senator Edwards and by unanimous consent, Senator Anderson will be shown as Co-sponsor of H.B. 1183.

## **CO-SPONSOR OF HOUSE BILL 1440**

On motion of Senator Sims and by unanimous consent, Senator Lyon will be shown as Co-sponsor of H.B. 1440.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 2181**

Senator Parker called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on H.B. 2181 and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on H.B. 2181 before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Parker, Chairman; Santiesteban, Green, Brooks and Barrientos.

# SENATE CONFEREES ON SENATE BILL 482 DISCHARGED

On motion of Senator Johnson and by unanimous consent, the Senate conferees on S.B. 482 were discharged.

# SENATE BILL 482 WITH HOUSE AMENDMENTS

On motion of Senator Johnson and by unanimous consent, the Senate concurred in the House amendments to S.B. 482 viva voce vote.

#### **GUESTS PRESENTED**

Senator Armbrister, upon recognition, introduced the Capitol Physician for the Day, Dr. Jerry Crabtree of Victoria.

Dr. Crabtree, accompanied by his son, Wesley, was welcomed and received the appreciation of the Senate for his service.

# **CONFERENCE COMMITTEE ON HOUSE BILL 150**

Senator Montford called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on H.B. 150 and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on H.B. 150 before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Montford, Chairman; McFarland, Farabee, Lyon and Henderson.

# SENATE BILL 462 WITH HOUSE AMENDMENTS

Senator Armbrister called S.B. 462 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

## Committee Amendment No. 1 - Clemons

Amend S.B. 462 by adding the words "all of" between the word "uses" and the word "the" on line 18, page 1.

## Committee Amendment No. 2 - Clemons

Amend S.B. 462 by renumbering Section 2 to 3 and adding a new SECTION 2 to read as follows:

SECTION 2. Section 1.03(5), Health Facilities Development Act (Article 1528j, Vernon's Annotated Texas Civil Statutes), is amended by adding a new Subsection (I) to read as follows:

"(1) the cost of financing, establishing, and funding a reserve fund or reserve funds for, a program of self-insurance and/or risk management and further including without limitation the cost of the preparation of studies, surveys, estimates of cost, revenue, risk and liability, and all other costs and expenses necessary or incident to the planning, providing or determining the feasibility and practicability, and the continuing program and operating costs, of such program of self-insurance and/or risk management."

The amendments were read.

Senator Armbrister moved to concur in the House amendments.

The motion prevailed viva voce vote.

# SENATE BILL 1345 WITH HOUSE AMENDMENT

Senator Washington called S.B. 1345 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

# Floor Amendment - Patronella

Amend S.B. 1345 by renumbering Section 2 of the bill as Section 3 and adding a new Section 2 to read as follows:

SECTION 2. Section 1, Chapter 129, Acts of the 69th Legislature, Regular Session, 1985 (Article 2351i, Vernon's Texas Civil Statutes), is amended to read as follows:

- Sec. 1. (a) The commissioners court of a county may administer or otherwise engage in community and economic development projects authorized under Title I of the Housing and Community Development Act of 1974, [and under] other federal laws creating community and economic development programs, state and local government economic development programs, small and disadvantaged business programs, and other programs created for the purpose of stimulating, encouraging, and developing means to enhance business location and development.
- (b) The commissioners court may authorize the projects to be administered by county commissioner precincts.
- (c) The projects may be developed and executed in conjunction with private resources. Entities such as cities, towns, school districts, finance corporations, universities, foundations, not-for-profit organizations, boards, councils, and

commissions may participate in the projects by expenditures of both manpower and financial resources to develop, execute, and implement operations of the projects.

(d) The projects are subject to the approval of the commissioners court. Provided, however, nothing in this Act shall authorize a commissioners court to exercise any ordinance-making authority not otherwise specifically authorized by state law.

The amendment was read.

Senator Washington moved to concur in the House amendment.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

#### SENATE BILL 776 WITH HOUSE AMENDMENTS

Senator Edwards called S.B. 776 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

#### Floor Amendment No. 1 - Roberts

Amend S.B. 776 on page 4, Sec. 88.409 by adding an additional subsection (8) as follows:

(8) Corpus Christi State University at Corpus Christi.

#### Floor Amendment No. 2 - Jones

Amend S.B. 776 as follows:

On Page 4 Line 11 at Tyler add University of Texas at El Paso and renumber accordingly.

The amendments were read.

Senator Edwards moved to concur in the House amendments.

The motion prevailed viva voce vote.

## (Senator Brooks in Chair)

# CONFERENCE COMMITTEE REPORT ON HOUSE JOINT RESOLUTION 2 ADOPTED

Senator Leedom called from the President's table the Conference Committee Report on H.J.R. 2. (The Conference Committee Report having been filed with the Senate and read on Tuesday, May 26, 1987.)

On motion of Senator Leedom, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

# SENATE BILL 1035 WITH HOUSE AMENDMENTS

Senator Tejeda called S.B. 1035 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

# Committee Amendment - Hinojosa

Amend S.B. 1035 by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 2, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (l) to read as follows:

- (a) The term "dangerous drug" means any drug or device that is not included in Penalty Groups I through IV of the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes) and that is unsafe for self-medication, and includes any [the following:
- [(1) Procaine, its salts, derivatives, or compounds or mixtures thereof except ointments and creams for topical application containing not more than two and one-half percent (2-1/2%) strength:
- [(2) Any] drug, including an anabolic steroid and a human growth hormone, or any device which bears or is required to bear the legend: Caution: federal law prohibits dispensing without prescription, or the legend: Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.
- (1) The term "anabolic steroid" includes any of the following or any isomer, ester, salt, or derivative of the following that acts in the same manner on the human body:
  - (1) clostebol;
  - (2) dehydrochlormethyltestosterone;
  - (3) ethylestrenol;
  - (4) fluoxymesterone;
  - (5) mesterolone;
  - (6) methandienone;
  - (7) methandrostenolone;
  - (8) methenolone;
  - (9) methyltestosterone;
  - (10) nandrolone:
  - (11) norethandrolone;
  - (12) oxandrolone;
  - (13) oxymesterone;
  - (14) oxymetholone;
  - (15) stanozolol; and
  - (16) testosterone.
- SECTION 2. Section 4, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), is amended to read as follows:
- Sec. 4. The provisions of paragraphs (a) and (d) of Section 3 and Section 5A shall not be applicable:
- (a) As to the delivery of dangerous drugs to persons included in any of the classes hereinafter named, or to the agents or employees of such persons, for use in the usual course of their business or practice or in the performance of their official duties, as the case may be; or
- (b) To the possession of dangerous drugs by such persons or their agents or employees for such use:
- (1) Pharmacy, drug store, dispensary, apothecary shop, or prescription laboratory, duly registered with the State Board of Pharmacy;
  - (2) Practitioners;
- (3) Persons who procure dangerous drugs for the purpose of lawful research, teaching, or testing, and not for resale;
- (4) Hospitals which procure dangerous drugs for lawful administration by practitioners;
  - (5) Officers or employees of Federal, State, or local government;
- (6) Manufacturers and Wholesalers registered with the Commissioner of Health as required by the Texas Food, Drug and Cosmetic Act [Chapter 373, Acts

of the 57th Legislature, 1961, as amended] (Article 4476-5, Vernon's Texas Civil Statutes).

(7) Carriers and Warehousemen.

SECTION 3. Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), is amended by adding Section 5A to read as follows:

Sec. 5A. (a) This section applies to the prescription, possession, delivery, and administration of anabolic steroids or human growth hormones and is in addition to all other requirements of this Act concerning the manufacture, delivery, sale, prescription, possession, inventory, and recording of the inventory and sale of

dangerous drugs.

(b) A practitioner may not prescribe, dispense, deliver, or administer an anabolic steroid or human growth hormone or cause an anabolic steroid or human growth hormone to be administered under his direction or supervision except for a valid medical purpose and in the course of a professional practice. Bodybuilding, muscle enhancement, or increasing muscle bulk or strength through the use of an anabolic steroid or human growth hormone by a person who is in good health is

not a valid medical purpose.

- (c) Except as provided in Subsection (d) of this section, a practitioner or pharmacist may not prescribe, dispense, or deliver an anabolic steroid or a human growth hormone without a written prescription on a form that meets the requirements of and is filled in by the practitioner in accordance with Section 40(g), Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes). A practitioner who prescribes, dispenses, or delivers an anabolic steroid or a human growth hormone shall submit a copy of the prescription to the Texas State Board of Medical Examiners not later than the 30th day after the date the practitioner prescribed, dispensed, or delivered the steroid or hormone. The Texas State Board of Medical Examiners shall maintain and review a file of all prescriptions submitted to that board under this subsection in order to identify any noncompliance with this Act.
- (d) A practitioner licensed by the State Board of Veterinary Medical Examiners may prescribe or dispense an anabolic steroid or a human growth hormone for use for an animal without complying with the reporting provisions of Subsection (c) of this section.

(e) A person commits an offense if the person:

(1) prescribes, dispenses, delivers, or administers an anabolic steroid or a human growth hormone or delivers a prescription form for an anabolic steroid or a human growth hormone to a person for human use for any purpose other than a valid medical purpose and in the course of professional practice;

(2) prescribes, dispenses, or delivers an anabolic steroid or a human growth hormone for human use without complying with Subsection (c) of this section;

(3) without a valid prescription delivers an anabolic steroid or a human growth hormone to a person for human use; or

(4) is not a practitioner or pharmacist, and the person possesses over 250 tablets or eight 2cc bottles of an anabolic steroid or a human growth hormone or combination of anabolic steroids or human growth hormones.

(f) Except as provided by Subsection (g) of this section, an offense under this

section is a felony of the third degree.

(g) If it is shown on the trial of a defendant for an offense under this section that the defendant was previously convicted of an offense under this section, the offense is punishable as a felony of the second degree.

SECTION 4. Subsection (b), Section 15, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas

Civil Statutes), is amended to read as follows:

- (b) Any person who sells or delivers or offers to sell or deliver in violation of this Act any dangerous drug defined in this Act, shall be guilty of a felony and upon conviction is punishable by confinement in the penitentiary for not less than two (2) nor more than ten (10) years and, in addition, he may be punished by a fine not to exceed Five Thousand Dollars (\$5,000). Proof of an offer to sell must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree. This subsection does not apply to conduct that is specifically prohibited by Section 5A of this Act.
- SECTION 5. (a) The change in law made by this Act applies only to the punishment for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.
- (b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 6. This Act takes effect September 1, 1987.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

# Floor Amendment No. 1 - Hinojosa

Amend Section 3 of C.S.S.B. 1035 as follows:

In subsection (c) strike the last two sentences; strike subsection (d) in its entirety; and renumber the subsequent subsections accordingly.

## Floor Amendment No. 2 - Hinojosa

Amend S.B. 1035 by amending Section 5A(c), Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes), as added by Section 3 of the bill, to read as follows:

(c) A practitioner or pharmacist may not prescribe, dispense, or deliver an anabolic steroid or a human growth hormone without a written prescription that meets the requirements of Section 40(g), Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes).

## Floor Amendment No. 3 - Hinojosa

Amend Section 3 of C.S.S.B. 1035 by adding a new subsection (d) (and renumbering the subsequent subsections accordingly) as follows:

(d) A practitioner may administer an anabolic steroid for a valid medical purpose in his office without the necessity of writing a prescription as required by subsection (c) of this Section. However, the practitioner must comply with subsection (b) of this Section.

The amendments were read.

Senator Tejeda moved to concur in the House amendments.

The motion prevailed viva voce vote.

# CONFERENCE COMMITTEE REPORT ON SENATE BILL 24 ADOPTED

Senator Barrientos called from the President's table the Conference Committee Report on S.B. 24. (The Conference Committee Report having been filed with the Senate and read on Saturday, May 23, 1987.)

On motion of Senator Barrientos, the Conference Committee Report was adopted viva voce vote.

# CONFERENCE COMMITTEE ON HOUSE JOINT RESOLUTION 3

Senator Edwards called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on H.J.R. 3 and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on H.J.R. 3 before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Edwards, Chairman; Washington, Jones, Anderson and Blake.

# COMMITTEE SUBSTITUTE HOUSE BILL 43 ON THIRD READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its third reading and final passage:

C.S.H.B. 43, Relating to the sale of certain mixtures of gasoline and alcohol; providing penalties.

The bill was read third time and was finally passed viva voce vote.

#### RECORD OF VOTE

Senator Anderson asked to be recorded as voting "Nay" on the final passage of the bill.

# HOUSE BILL 373 ON SECOND READING

On motion of Senator Farabee and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 373, Relating to the adoption of the Revised Uniform Reciprocal Enforcement of Support Act.

The bill was read second time.

Senator Farabee offered the following amendment to the bill:

Amend H.B. 373 by adding the following sections where appropriate:

SECTION . Section 76.02, Human Resources Code, is amended by adding subsection (e) to read as follows:

- (e) For the purposes of this chapter, child support services include, but are not limited to the following proceedings and actions to:
  - (1) establish a support order in a suit affecting the parent-child relationship;
  - (2) enforce a child support order by contempt;
  - (3) obtain confirmation of and judgment for child support arrearages:
- (4) require a person obligated to support a child to furnish bond or other security;
  - (5) require withholding from earnings;

(6) transfer the proceeding;

(7) petition for further action concerning a child;
 (8) modify an existing child support order or decree;

(9) initiate procedures for withholding child support from earnings without the necessity of further action by a court;

(10) recover under any reciprocal enforcement of support act or interstate income withholding act whether as rendering, initiating or responding state; and,

(11) any other proceedings or actions necessary to effectuate the provisions of this Chapter.

of this Chapter.

SECTION \_. Section 76.03, Human Resources Code, is amended by amending subsections (a), (b), (c), and (d) and adding subsection (e) to read as follows:

Section 76.003. ASSIGNMENT OF RIGHT TO SUPPORT. (a) The filing of an application for or the receipt of financial assistance under Chapter 31 of this code constitutes an assignment to the attorney general of any rights to support from any other person that the applicant or recipient may have in his own behalf or for a child for whom the applicant or recipient is claiming assistance, including the right to the amount accrued at the time the application is filed or the assistance is received. An applicant's assignment under this section is valid only if the Texas Department of Human Services [Resources] approves the application. The attorney general may distribute support payments or parts of payments received by it to the family for whom the payments are made or may use the payments to provide assistance and services to and on behalf of needy dependent children.

- (b) Child Support payments for the benefit of a recipient child or a child other than a recipient child for whose benefit the attorney general is providing or has provided service under this chapter [may] shall be made payable to and transmitted to the attorney general. If a court has ordered support payments to be made to an applicant for or recipient of financial assistance or to a person other than such applicant or recipient, the attorney general may file notice of the assignment with the court ordering the payments. The notice must include:
- (1) a statement that the child is an applicant for or recipient of financial assistance, or a child other than a recipient child for whom services are provided;
- (2) the name of the child and the caretaker for whom support has been ordered by the court;
- (3) the style and cause number of the case in which support was ordered; and
- (4) a request that the payments ordered be made to the attorney general's office.
- (c) On receipt of the notice without a requirement or a hearing, the court shall order that the payments be made <u>payable to and transmitted to the attorney</u> general's office
- (d) The filing of an application for or the receipt of services under Section 76.004 of this code constitutes an assignment to the attorney general of any rights to support from any other person that the applicant for or recipient of services may have in his own behalf, or for a child, including the right to the amount accrued at the time the application is filed or the services are provided [The attorney general's office shall cooperate with the Texas Department of Human Resources in determining the distribution and use of child support payments received under this section].
- (e) A notice filed pursuant to this subsection does not constitute a modification of an order to pay support entered pursuant to Title II, Family Code; and the provisions of Section 14.08, Family Code, shall not apply to notices filed pursuant to this subsection.

SECTION \_. Section 76.006, Human Resources Code, is amended to read as follows:

Section 76.006. CONFIDENTIALITY OF RECORDS. All files and records on recipients of, or applicants for, benefits or services provided under this chapter or Title 2 of this Code, and on an alleged father of an illegitimate child are confidential. Release of information from the files and records shall be restricted to purposes directly connected with administration of the child support services, [collection,] paternity determination, parent locator, or aid to families with dependent children programs. The attorney general by rule may provide for the release of information to public officials.

SECTION . Section 76.007, Human Resources Code, is amended to read as follows:

Section 76.007. ATTORNEYS REPRESENTING STATE. Attorneys employed by the attorney general may represent the state or other parties in legal actions brought pursuant to [a suit to establish a child support obligation, collect child support, or determine paternity brought under the authority of federal law or] this chapter. The attorney general may contract with private attorneys or political subdivisions of the state to represent parties in legal actions [to establish child support obligations, to collect child support, or to determine paternity,] brought [under the authority of federal law and] pursuant to this chapter. The attorney general shall provide copies of all contracts entered into under this section to the Legislative Budget Board and the Governor's Office of Budget and Planning, along with a written justification of the need for each contract, within 60 days after the execution of the contract.

SECTION \_. Section 76.008, Human Resources Code, is amended to read as follows:

Section 76.008. PAYMENT OF PENALTIES. From funds appropriated for the attorney general's office or for the administration of the office of the attorney general, the attorney general shall reimburse the Texas Department of Human Services [Resources] for any penalty assessed under Title IV-A for the federal Social Security Act that is assessed because of the office's administration of this chapter.

SECTION . Chapter 46, Human Resources Code, is repealed.

The amendment was read and was adopted viva voce vote.

On motion of Senator Farabee and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

# HOUSE BILL 373 ON THIRD READING

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B.** 373 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan,

The bill was read third time and was passed viva voce vote.

# HOUSE BILL 570 ON SECOND READING

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 570, Relating to the operation and management of policemen's retirement systems in cities with a population of 1.2 million or more.

The bill was read second time and was passed to third reading viva voce vote.

#### HOUSE BILL 570 ON THIRD READING

Senator Whitmire moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B.** 570 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Navs 0.

Absent-excused: Truan.

#### **HOUSE BILL 471 ON SECOND READING**

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 471, Relating to access to criminal histories of school district employees.

The bill was read second time and was passed to third reading viva voce vote.

# HOUSE BILL 471 ON THIRD READING

Senator Glasgow moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B.** 471 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Navs 0.

Absent-excused: Truan,

# **HOUSE BILL 353 ON SECOND READING**

On motion of Senator Lyon and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 353, Relating to the authority of the governing board of the Texas School for the Blind to obtain criminal history information records to investigate certain employees; providing a penalty.

The bill was read second time and was passed to third reading viva voce vote.

# HOUSE BILL 353 ON THIRD READING

Senator Lyon moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 353 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

#### HOUSE BILL 1226 ON SECOND READING

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1226, Relating to the creation and establishment of special districts to provide emergency services in counties of 125,000 persons or less.

The bill was read second time.

Senator Glasgow offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend H.B. 1226 by deleting SECTION 4 and substituting the following:

SECTION 4. This Act takes effect only if the Constitutional Amendment proposed by S.J.R. 27, 70th Legislature, Regular Session, 1987, is approved by the voters.

The amendment was read and was adopted viva voce vote.

Senator Glasgow offered the following amendment to the bill:

#### Floor Amendment No. 2

Amend H.B. 1226 as follows:

1) Strike SECTION 4 and substitute the following:

SECTION 4. Section 3.02(c), Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes), is amended to read as follows:

- (c) Ground or air transfer vehicles and staff that are used to transport a patient who is under a physician's care between medical facilities or between a medical facility and a private residence and industrial ambulances are not subject to this Act; provided, however, that industrial ambulances may be certified, registered, or licensed on a voluntary basis.
- 2) Renumber SECTION 5 to be SECTION 6, and add the following new SECTION 5:

SECTION 5. SECTIONS 1 through 3 of this Act take effect only if the constitutional amendment proposed by **H.J.R. 46**, 70th Legislature, Regular Session, 1987, is approved by the voters. SECTION 4 of this Act takes effect September 1, 1987.

The amendment was read and was adopted viva voce vote.

On motion of Senator Glasgow and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

#### HOUSE BILL 1226 ON THIRD READING

Senator Glasgow moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 1226 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

#### HOUSE BILL 250 ON SECOND READING

On motion of Senator Sims and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 250, Relating to the eligibility of certain seasonal workers for unemployment compensation benefits.

The bill was read second time and was passed to third reading viva voce vote.

## (President in Chair)

#### HOUSE BILL 250 ON THIRD READING

Senator Sims moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 250 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

# COMMITTEE SUBSTITUTE HOUSE BILL 1650 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1650, Relating to the effect of certain property appraisal appeals.

The bill was read second time and was passed to third reading viva voce vote.

# COMMITTEE SUBSTITUTE HOUSE BILL 1650 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.H.B. 1650 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

#### HOUSE BILL 2143 ON SECOND READING

On motion of Senator Santiesteban and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2143, Relating to the rights, duties, and obligations of surface owners who act as the leasing agent for certain state minerals and to the issuance of state prospecting permits for certain minerals.

The bill was read second time.

Senator Santiesteban offered the following committee amendment to the bill:

Amend H.B. 2143 as follows:

- (1) On page 1, line 9, between "relinquishment" and "herein" insert <u>"or</u> agency right".
  - (2) On page 1, line 9, strike "so".
  - (3) On page 1, lines 9 and 10, strike "by the commissioner".
- (4) On page 8, strike lines 7 through 15, and insert the following: "those minerals which are not subject to lease or permit under any other statute. [all minerals except:
  - (1) oil and gas;
  - (2) coal, lignite, sulphur, salt, and potash;
  - (3) shell, sand, and gravel; and
- (4) fissionable minerals other than uranium and thorium on land sold with a reservation of minerals to the state.]"
  - (5) On page 10 strike lines 4 through 7 and reletter "(f)" to "(e)" on line 8.
- (6) On page 11, insert a new Section 7 before the emergency clause to read as follows:

SECTION 7. Regardless of any other legislation passed by the 70th Legislature, Regular Session, Section 4 of this bill is intended to be the sole and controlling amendment to Section 53.011, Natural Resources Code.

(7) Renumber the emergency clause as Section 8.

The committee amendment was read and was adopted viva voce vote.

On motion of Senator Santiesteban and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

#### **HOUSE BILL 2143 ON THIRD READING**

Senator Santiesteban moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 2143 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

#### HOUSE BILL 1911 ON SECOND READING

On motion of Senator McFarland and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1911, Relating to the acquisition of control of a domestic insurer and payment of dividends.

The bill was read second time and was passed to third reading viva voce vote.

# HOUSE BILL 1911 ON THIRD READING

Senator McFarland moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 1911 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

# HOUSE BILL 474 ON SECOND READING

On motion of Senator Krier and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B.** 474, Relating to an exception from the open records law for photographs depicting a peace officer or campus security officer.

The bill was read second time.

Senator Krier offered the following amendment to the bill:

Amend H.B. 474 on page 2, by deleting lines 35 and 36 and adding the following language:

"commissioned under Section 51.212, Education Code, the release of which would endanger the life or physical safety of the officer unless:

- (a) the officer is under indictment or charged with an offense by information;
- (b) the officer is a party in a fire or police civil service hearing or a case in arbitration; or
  - (c) the photograph is introduced as evidence in a judicial proceeding."

The amendment was read and was adopted viva voce vote.

On motion of Senator Krier and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

## HOUSE BILL 474 ON THIRD READING

Senator Krier moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B.** 474 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

# COMMITTEE SUBSTITUTE HOUSE BILL 2090 ON SECOND READING

On motion of Senator Blake and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2090, Relating to payment of unemployment compensation benefits and the management of certain unemployment compensation funds; authorizing the issuance of bonds and the increase of certain unemployment taxes.

The bill was read second time and was passed to third reading viva voce vote.

# COMMITTEE SUBSTITUTE HOUSE BILL 2090 ON THIRD READING

Senator Blake moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.H.B. 2090 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

# HOUSE BILL 1007 ON SECOND READING

On motion of Senator Tejeda and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1007, Relating to the identification of vehicles owned and used by school districts and institutions of higher education; providing a criminal penalty.

The bill was read second time.

Senator Tejeda offered the following amendment to the bill:

Amend H.B. 1007 as follows:

On line 37, insert "Further, this subsection does not apply to a motor vehicle used by a Chancellor or President of an institution of higher education." after "Procedure."

The amendment was read and was adopted viva voce vote.

On motion of Senator Tejeda and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

#### HOUSE BILL 1007 ON THIRD READING

Senator Tejeda moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 1007 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

#### HOUSE BILL 280 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B.** 280, Relating to presumptions applicable to the offense of evading arrest and to the penalties imposed on conviction of the offense.

The bill was read second time and was passed to third reading viva voce vote.

# HOUSE BILL 280 ON THIRD READING

Senator Barrientos moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B.** 280 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

# **HOUSE BILL 824 ON SECOND READING**

On motion of Senator Parker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 824, Relating to residency requirements for municipal employees.

The bill was read second time and was passed to third reading viva voce vote.

#### HOUSE BILL 824 ON THIRD READING

Senator Parker moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 824** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Navs: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

# **HOUSE BILL 662 ON SECOND READING**

On motion of Senator Farabee and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 662, Relating to the requirement that contracts with the state or a political subdivision of the state contain a detailed trench construction plan.

The bill was read second time.

Senator Edwards offered the following amendment to the bill:

Amend H.B. 662 by striking Sections 3 and 4 and adding the following in lieu thereof:

SECTION 3. Subsection 2(b) of Article 2368a, TEX. REV. CIV. STAT., is amended to read as follows:

(b) The competitive sealed bidding procedure as provided herein shall be used for the award of all contracts subject to the provisions of this section, except that in the case of high technology procurements the city may follow the competitive sealed proposal procedure provided in Subsection (c) of this section.

Whenever the competitive sealed bidding procedure applies to a proposed contract, notice of the time and place when and where such a contract shall be let shall be published in such city once a week for two (2) consecutive weeks prior to the time set for letting such contract, the date of the first publication to be at least fourteen (14) days prior to the date set for letting said contract; and said contract shall be let to the lowest responsible bidder. In determining who is a responsible bidder, the governing body may take into account the safety record of the bidder, or the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, partnership or institution, provided, however, that the governing body has adopted a written definition and criteria for accurately determining the safety record of a bidder, has given notice to prospective bidders, in the bid specifications, that the safety record of a bidder may be considered in determining the responsibility of that bidder and, provided further, that such determinations are not arbitrary and capricious. The governing body shall have the right to reject any and all bids, and if the contract is for the construction of public works, then the successful bidder shall be required to give a good and sufficient bond in the full amount of the contract price, for the faithful performance of such contract, executed by some surety company authorized to do business in this state in accordance with the provisions of Article 5160, Revised Statutes, and the amendments thereto. However, the city in making any contract calling for or requiring the expenditure or payment of less than \$100,000 may, in lieu of the bond requirement, provide in the contract that no money will be paid to the contractor until completion and acceptance of the work by the city. If there is no newspaper published in such city, then the notice of letting such contract shall be given by causing notice thereof to be posted at the city hall for (14) days prior to the time of letting such contract. Trade secrets and confidential information contained in the competitive sealed bids shall not be open for public inspection.

SECTION 4. Section 5 of Article 2368a.3, TEX. REV. CIV. STAT., is amended to read as follows:

Sec. 5. A governmental entity shall have the right to reject any and all bids. Contracts covered by this Act shall be awarded to the lowest, responsible bidder, but a contract may not be awarded to a bidder who is not the lowest bidder unless prior to the award each lower bidder is given notice of the proposed award and is given an opportunity to appear before the governing body of the governmental entity or the designated representative of the governing body and present evidence

concerning the bidder's responsibility. In determining who is a responsible bidder, the governing body may take into account the safety record of the bidder, or the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, partnership or institution, provided, however, that the governing body has adopted a written definition and criteria for accurately determining the safety record of a bidder, has given notice to prospective bidders, in the bid specifications, that the safety record of a bidder may be considered in determining the responsibility of that bidder and, provided further, that such determinations are not arbitrary and capricious.

SECTION 5. Section 7 of Article 2368a.5, TEX. REV. CIV. STAT., is amended to read as follows:

- Sec. 7. (a) The officer in charge of opening the bids shall present them to the commissioners court in session. The court shall award the contract to the responsible bidder who submits the lowest and best bid, or the court shall reject all bids and publish a new notice.
- (b) In cases where two responsible bidders submit the lowest and best bid, the commissioners court shall decide between the two by drawing lots in a manner prescribed by the county judge.
- (c) A contract may not be awarded to a bidder who is not the lowest dollar bidder meeting specifications unless, before the award, each lower bidder is given notice of the proposed award and is given an opportunity to appear before the commissioners court and present evidence concerning the lower bidder's responsibility. In determining who is a responsible bidder, the commissioners court may take into account the safety record of the bidder, or the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, partnership or institution, provided, however, that the commissioners court has adopted a written definition and criteria for accurately determining the safety record of a bidder, has given notice to prospective bidders, in the bid specifications, that the safety record of a bidder may be considered in determining the responsibility of that bidder and, provided further, that such determinations are not arbitrary and capricious.

SECTION 6. Subsection 3.11(e) of Article 601b, TEX. REV. CIV. STAT., is amended to read as follows:

- (e) Award of Contract. The commission shall award contracts to the bidder submitting the lowest and best bid conforming to the specifications required. Complying with the specified time limit for submission of written data, samples, or models on or before bid opening time is essential to the materiality of a bid, provided, however, that the commission shall have the authority to waive this provision if the failure to comply is beyond the control of the bidder. In determining who is the lowest and best bidder, the commission may take into account the safety record of the bidder, or the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, partnership or institution, provided, however, that the commission has adopted a written definition and criteria for accurately determining the safety record of a bidder, has given notice to prospective bidders, in the bid specifications, that the safety record of a bidder may be considered in determining the lowest and best bidder and, provided further, that such determinations are not arbitrary and capricious. In determining who is the lowest and best bidder, in addition to price, the commission shall consider:
- (1) the quality, availability, and adaptability of the supplies, materials, equipment, or contractual services, to the particular use required;
  - (2) the number and scope of conditions attached to the bid;
- (3) the ability, capacity, and skill of the bidder to perform the contract or provide the service required;

- (4) whether the bidder can perform the contract or provide the service promptly, or within the time required, without delay or interference;
- (5) the character, responsibility, integrity, reputation, and experience of the bidder;
  - (6) the quality of performance of previous contracts or services;
- (7) the previous and existing compliance by the bidder with laws relating to the contract or service;
- (8) any previous or existing noncompliance by the bidder with specifications requirements relating to time of submission of specified data such as samples, models, drawings, certificates, or other information;
- (9) the sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service; and
- (10) the ability of the bidder to provide future maintenance, repair parts, and service for the use of the subject of the contract.

SECTION 7. This Act takes effect September 1, 1987. SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted viva voce vote.

On motion of Senator Farabee and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

#### HOUSE BILL 662 ON THIRD READING

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 662 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

## COMMITTEE SUBSTITUTE HOUSE BILL 1869 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1869, Relating to public notice of a hearing on an application for a landfill permit.

The bill was read second time.

Senator Brooks offered the following amendment to the bill:

Amend C.S.H.B. 1869 as follows:

- (1) On page 1, delete line 66.
- (2) On page 2, delete lines 1, 2 and 3.
- (3) On page 1, between lines 65 and 66, insert a new Section 2 to read as follows:

#### SECTION 2.

- (a) Not later than October 1, 1988, the Texas Department of Health after notice and hearing shall implement rules for the handling, transporting, and disposal of infectious waste that are consistent with the report submitted on or before June 1, 1988, by the legislative interim committee studying the handling, transporting, and disposal of infectious waste.
- (b) The Texas Department of Health may not implement emergency rules for the handling, transporting, and disposal of infectious waste before October 1, 1989.

The amendment was read and was adopted viva voce vote.

On motion of Senator Brooks and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

# COMMITTEE SUBSTITUTE HOUSE BILL 1869 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.H.B. 1869 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

# HOUSE BILL 2109 ON SECOND READING

On motion of Senator Washington and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2109, Relating to the legislative leave taken by certain fire fighters or police officers.

The bill was read second time and was passed to third reading viva voce vote.

## HOUSE BILL 1318 ON SECOND READING

On motion of Senator Washington and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1318, Relating to municipal liability for certain traffic offenses committed by certain municipal employees in the course and scope of their employment.

The bill was read second time and was passed to third reading viva voce vote.

(Senator Henderson in Chair)

# HOUSE BILL 1957 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading: **H.B. 1957**, Relating to fire fighters' and police officers' civil service in cities over 10,000 population.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

Amend H.B. 1957 on page 2, line 27 and on page 3, line 1 by striking the words "board of three (3) physicians" and deleting the words ", psychiatrists, or psychologists as appropriate" and adding the words "three member board composed of a physician, a psychiatrist and a psychologist or any combination thereof as appropriate".

The amendment was read and was adopted viva voce vote.

On motion of Senator Brown and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

#### HOUSE BILL 1957 ON THIRD READING

Senator Brown moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 1957 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 2.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Henderson, Johnson, Jones, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sims, Tejeda, Uribe, Whitmire, Zaffirini.

Nays: Sarpalius, Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

#### HOUSE BILL 1387 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1387, Relating to the purchase of supplies for a housing authority through the U.S. Department of Housing and Urban Development.

The bill was read second time.

Senator Leedom offered the following amendment to the bill:

Amend H.B. 1387 by adding a new Subsection (c) to Section 21, Housing Authorities Law (Article 1269k, Vernon's Texas Civil Statutes), in SECTION 1 to read as follows:

(c) Upon request of the vendor, an authority shall provide any Texas vendor with the current cost published by the consolidated supply program or any other product program established by the Federal Government that the authority might use to purchase any of the supplies or equipment it uses. An authority shall then permit the vendor to bid on those items it believes that it can provide at the same or lower delivered cost.

The amendment was read and was adopted viva voce vote.

On motion of Senator Zaffirini and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

#### HOUSE BILL 1387 ON THIRD READING

Senator Zaffirini moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 1387 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

#### HOUSE BILL 2050 ON SECOND READING

Senator Santiesteban asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

H.B. 2050, Relating to hunting a golden eagle or Mexican brown eagle.

There was objection.

Senator Santiesteban then moved to suspend the regular order of business and take up H.B. 2050 for consideration at this time.

The motion prevailed by the following vote: Yeas 27, Nays 3.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Henderson, Johnson, Krier, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Tejeda, Uribe, Washington, Whitmire, Zaffirini.

Nays: Jones, Leedom, Sims.

Absent-excused: Truan.

The bill was read second time and was passed to third reading viva voce vote.

# RECORD OF VOTE

Senator Sims asked to be recorded as voting "Nay" on the passage of the bill to third reading.

# HOUSE BILL 2050 ON THIRD READING

Senator Santiesteban moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 2050 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 4.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Henderson, Johnson, Krier, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Tejeda, Uribe, Whitmire, Zaffirini.

Nays: Jones, Leedom, Sims, Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 3.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Henderson, Johnson, Krier, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Tejeda, Uribe, Washington, Whitmire, Zaffirini.

Nays: Jones, Leedom, Sims.

Absent-excused: Truan.

#### **HOUSE BILL 2119 ON SECOND READING**

On motion of Senator Farabee and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2119, Relating to the authority of a municipality to contract for jail facilities and the operation of those facilities.

The bill was read second time.

Senator Washington offered the following amendment to the bill:

# Floor Amendment No. 1

Amend H.B. 2119 by adding a new Section 2 to read as follows and renumbering the existing Section 2 as Section 3:

SECTION 2. Title 81, Revised Statutes, is amended by adding Article 5115f to read as follows:

Art. 5115f. TYPES OF INMATES IN CERTAIN MUNICIPAL JAILS. A municipality with a population of more than 1,500,000 according to the most recent federal census may not house a person overnight in the municipal jail if the person is charged with a felony or a misdemeanor punishable by confinement in a county jail.

The amendment was read and was adopted viva voce vote.

Senator Farabee offered the following amendment to the bill:

# Floor Amendment No. 2

# Amend H.B. 2119 as follows:

On page 1, line 26, between "facility" and the period insert the following:

", provided that the transaction does not involve a lease-purchase or installment sale obligation without the approval of the attorney general as required by law".

The amendment was read and was adopted viva voce vote.

Senator Green offered the following amendment to the bill:

## Floor Amendment No. 3

Amend Section 1 of H.B. 2119 by adding subparagraph (9) to Article 5115e (b), Title 81, Revised Statutes) on page 2 between lines 17 and 18, to read as follows:

(9) Any improvement to real property occurring as the result of a contract under subsection (a) hereof must comply with the provisions of Article 2368 a.3 and Article 5159a, Vernon's Texas Civil Statutes, as amended.

The amendment was read and was adopted viva voce vote.

On motion of Senator Farabee and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

#### **HOUSE BILL 2119 ON THIRD READING**

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 2119 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

## COMMITTEE SUBSTITUTE HOUSE BILL 826 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 826, Relating to the offense of failure to identify oneself to a peace officer.

The bill was read second time and was passed to third reading viva voce vote.

## COMMITTEE SUBSTITUTE HOUSE BILL 826 ON THIRD READING

Senator Armbrister moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.H.B. 826 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

### HOUSE BILL 2351 ON SECOND READING

On motion of Senator Uribe and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2351, Validating all school districts, including all types of junior and regional college districts, together with the boundaries and names thereof; validating the creation, abolition, and conversion of all such school districts, and all changes in boundaries in all such school districts; validating the election of certain members to boards of trustees; validating annexation of territory and the divorcement or separation from municipal control in all municipally controlled school districts; validating all bonds, bond taxes, maintenance taxes, and bond assumptions and the elections authorizing same, of and in all school districts, including all types of junior

and regional college districts; providing this Act shall not be construed as validating any boundary change made or attempted to be made by any ex parte order, resolution, or other Act of the board of trustees of any school district; providing that this Act shall have no application to litigation now pending questioning the validity of matters hereby validated, or to proceedings now pending before the county boards of trustees, State Commissioner of Education, or the State Board of Education, or to any district which has heretofore been declared invalid by certain courts, or to districts which may have been established and later returned to original status, providing such litigation or proceedings are ultimately determined against the validity of matters hereby validated; providing a saving clause.

The bill was read second time and was passed to third reading viva voce vote.

#### **HOUSE BILL 2351 ON THIRD READING**

Senator Uribe moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 2351 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

# HOUSE BILL 1785 ON SECOND READING

On motion of Senator Jones and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1785, Relating to the establishment of a uniform statewide accounting system for all agencies of state government, including institutions of higher education; making an appropriation.

The bill was read second time.

Senator Jones offered the following committee amendment to the bill:

Amend H.B. 1785 by striking Section 2.

The committee amendment was read and was adopted viva voce vote.

Senator Jones offered the following amendment to the bill:

Amend H.B. 1785, page 1, line 17 to read as follows:

Representatives, the Treasurer, the State Auditor, and a representative of the Texas Higher Education Coordinating Board.

Amend SECTION 1, Art. 4348d, by adding a new subsection (c) to read as follows and renumbering the subsequent subsections accordingly:

(c) In order that the uniform system of financial accounting and reporting shall provide for maximum consistency with the national reporting system for higher education, the uniform system shall incorporate insofar as possible the provisions of the financial accounting and reporting manual published by the National Association of College and University Business Officers. The accounts of the institutions shall be maintained and audited in accordance with the approved reporting system.

The amendment was read and was adopted viva voce vote.

On motion of Senator Jones and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

# **HOUSE BILL 1785 ON THIRD READING**

Senator Jones moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 1785 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

# HOUSE BILL 2408 ON SECOND READING

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2408, Relating to the hearing and determination of juror excuses and the postponement of jury service.

The bill was read second time.

Senator Harris offered the following amendment to the bill:

Amend H.B. 2408 by striking everything below the enacting clause and substituting the following:

SECTION 1. Chapter 29, Code of Criminal Procedure, is amended by adding Article 29.012 to read as follows:

Art. 29.012. RELIGIOUS HOLY DAY. (a) In this article:

- (1) "Religious organization" means an organization that meets the standards for qualification as a religious organization under Section 11.20, Tax Code.
- (2) "Religious holy day" means a day on which the tenets of a religious organization prohibit its members from participating in secular activities, such as court proceedings.
- (b) If a juror in a criminal action is required to appear at a court proceeding on a religious holy day observed by the juror, the court or the court's designee shall recess the criminal action until the next day the court is in session after the conclusion of the holy day.
- (c) A juror seeking a recess must file with the court before the final selection of the jury an affidavit stating:

(1) the grounds for the recess; and

- (2) that the juror holds religious beliefs that prohibit him from taking part in a court proceeding on the day for which the recess is sought.
- (d) An affidavit filed under Subsection (c) of this section is proof of the facts stated and need not be corroborated.

SECTION 2. Article 35.03, Code of Criminal Procedure, is amended to read as follows:

Art. 35.03. EXCUSES. Sec. 1. Except as provided by Section 2 of this article, the [The] court shall then hear and determine excuses offered for not serving as a juror, either on a sworn statement from the juror or in person and under oath, and

if the court [he] deems the excuse sufficient, the court [he] shall discharge the juror

or postpone the juror's service.

Sec. 2. Under a plan approved by the commissioners court of the county in the same manner as a plan is approved for jury selection under Section 62.011, Government Code, in a case other than a capital felony case, the court's designee may hear and determine an excuse offered for not serving as a juror, either on a sworn statement from the juror or in person and under oath, and if the court's designee deems the excuse sufficient, he may postpone the juror's service.

SECTION 3. Section 62.110, Government Code, is amended by amending

Subsection (b) and adding Subsection (c) to read as follows:

(b) Pursuant to a plan approved by the commissioners court of the county in the same manner as a plan is approved for jury selection under Section 62.011, Government Code, the court's designee may hear any reasonable sworn excuse of a prospective juror and release him from jury service until another day of the term.

(c) The court or the court's designee as provided by this section may not excuse a prospective juror for an economic reason unless each party of record is

present and approves the release of the juror for that reason.

SECTION 4. Subchapter B, Chapter 62, Government Code, is amended by adding Section 62.112 to read as follows:

Sec. 62.112. EXCUSE OF JUROR FOR RELIGIOUS HOLY

DAY. (a) In this section:

(1) "Religious organization" means an organization that meets the standards for qualification as a religious organization under Section 11.20, Tax Code.

(2) "Religious holy day" means a day on which the tenets of a religious organization prohibit its members from participating in secular activities, such as

court proceedings.

- (b) If a prospective juror is required to appear at a court proceeding on a religious holy day observed by the prospective juror, the court or the court's designee shall release the prospective juror from jury service entirely or until another day of the term. If the court determines that a term of a court proceeding may extend to cover a day on which a religious holy day is observed by the prospective juror, the court or the court's designee shall release the prospective juror from jury service entirely or until another day of the term.
- (c) A prospective juror who seeks to be released from jury service may be required to file with the court an affidavit stating:

(1) the grounds for the release; and

(2) that the juror hold religious beliefs that prohibit him from taking part in a court proceeding on the day for which the release from jury duty is sought.

SECTION 5. Subtitle B, Title 2, Civil Practice and Remedies Code, is amended by adding Chapter 23 to read as follows:

**CHAPTER 23. JUROR CONTINUANCE** 

Sec. 23.001. DEFINITIONS. In this chapter:

- (1) "Religious organization" means an organization that meets the standards for qualification as a religious organization under Section 11.20, Tax Code.
- (2) "Religious holy day" means a day on which the tenets of a religious organization prohibit its members from participating in secular activities, such as court proceedings.
- Sec. 23.002. RECESS. (a) If a juror in a civil action is required to appear at a court proceeding on a religious holy day observed by the juror, the court or the court's designee shall recess the civil action until the next day the court is in session after the conclusion of the holy day.
- (b) A juror seeking a recess must file with the court before the final selection of the jury an affidavit stating:

(1) the grounds for the recess; and

(2) that the juror holds religious beliefs that prohibit him from taking part in a court proceeding on the day for which the recess is sought.

(c) An affidavit filed under Subsection (b) is proof of the facts stated and need

not be corroborated.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted viva voce vote.

On motion of Senator Harris and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

#### **HOUSE BILL 2408 ON THIRD READING**

Senator Harris moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2408** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

## NOTICE OF SESSION TO HOLD LOCAL AND UNCONTESTED BILLS CALENDAR

Senator Blake announced that a Local and Uncontested Bills Calendar had been placed on the Members' desks and gave notice that a Local and Uncontested Bills Calendar would be held at 8:30 a.m. on Thursday, May 28, 1987, and that all bills and resolutions would be considered on second and/or third reading in the order in which they are listed.

# MOTION TO PLACE COMMITTEE SUBSTITUTE HOUSE BILL 1183 ON SECOND READING

Senator Edwards moved to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 1183, Relating to the creation, duties, and powers of the Texas Agricultural Finance Authority and the development of and issuance of bonds for an agricultural financing program.

On motion of Senator Edwards and by unanimous consent, the motion to suspend the regular order was withdrawn.

## COMMITTEE SUBSTITUTE HOUSE BILL 1652 ON SECOND READING

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1652, Relating to the requirement that a person first obtain a license or permit before exercising a privilege authorized by the Alcoholic Beverage Code and further defining certain activities subject to regulation.

The bill was read second time and was passed to third reading viva voce vote.

## COMMITTEE SUBSTITUTE HOUSE BILL 1652 ON THIRD READING

Senator Glasgow moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.H.B. 1652 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 2.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Henderson, Johnson, Jones, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sims, Tejeda, Uribe, Washington, Whitmire.

Nays: Sarpalius, Zaffirini.

Absent-excused: Truan.

#### MESSAGE FROM THE HOUSE

House Chamber May 27, 1987

# HONORABLE W. P. HOBBY PRESIDENT OF THE SENATE

- SIR: I am directed by the House to inform the Senate that the House has passed the following:
- S.C.R. 50, Creating a special interim committee to study the problem of student drop-outs.
- H.C.R. 193, Granting David Ferry permission to sue the State of Texas and the Texas Parks and Wildlife Department.
- H.C.R. 202, Commending certain health and human services agencies and requesting the Long Term Care Coordinating Council to study needs of nursing home residents.
- H.C.R. 203, Directing the boards of regents of state colleges and universities to provide support services for transfer students.
- H.C.R. 211, Granting F. G. Gosling permission to sue the State of Texas and The University of Texas System.
- H.C.R. 212, Granting Edward McLenna permission to sue the State of Texas and the Gulf Coast Mental Health/Mental Retardation Center.
- H.C.R. 213, Creating the Special Task Force on the Future of Long Term Health Care.
- H.C.R. 215, Granting Mani Rao permission to sue the State of Texas and the Texas Comptroller's Office.

- S.C.R. 58, Directing certain agencies to develop a plan and interagency agreement to provide certain services to children with disabilities under the managing conservatorship of the State.
- S.C.R. 68, Establishing the Division of Oversight for Mental Health Services under the Health and Human Services Coordinating Council. (Amended)
- S.C.R. 96, Declaring the intent of both houses that certain budget agencies consider recommendations by the Purchasing and General Services Commission to incorporate building use charges for certain State agencies located in State-owned buildings when developing its proposed budget for the 71st Legislature.
  - S.C.R. 105, Authorizing creation of the Capitol Centennial Committee.
- S.C.R. 117, Directing the State Board of Education to clarify rules regarding excused absences.
  - S.C.R. 123, Establishing the Transition Services Task Force.

Respectfully,

BETTY MURRAY, Chief Clerk House of Representatives

# COMMITTEE SUBSTITUTE HOUSE BILL 1183 ON SECOND READING

On motion of Senator Edwards and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1183, Relating to the creation, duties, and powers of the Texas Agricultural Finance Authority and the development of and issuance of bonds for an agricultural financing program.

The bill was read second time.

Senator Sarpalius offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend C.S.H.B. 1183 by striking Sec. 58.012 (4) the word "two" and substituting in its place the following: the word "one".

The amendment was read and was adopted viva voce vote.

Senator Sarpalius offered the following amendment to the bill:

## Floor Amendment No. 2

Amend C.S.H.B. 1183 by striking Sec. 58.012 (b) the members serve staggered terms of two years and substituting in its place the following: the members serve staggered terms for 6 years.

The amendment was read and was adopted viva voce vote.

On motion of Senator Edwards and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

## COMMITTEE SUBSTITUTE HOUSE BILL 1183 ON THIRD READING

Senator Edwards moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.H.B. 1183 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

#### HOUSE BILL 1431 ON SECOND READING

On motion of Senator Parker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1431, Relating to investment of and security for investments of county funds.

The bill was read second time.

Senator Tejeda offered the following amendment to the bill:

## Floor Amendment No. 1

- 1. Amend H.B. 1431 by deleting subsection 2 of subdivision (d) of Section 1 in its entirety and renumbering accordingly.
- 2. Amend subsection (2) of Section (c) of Article 2549 in Section 2 of **H.B. 1431** to read as follows:
- "(2) <u>certificates of deposit issued by state or national banks</u> <u>domiciled in the state, the payment of which is insured in full by the Federal Deposit Insurance Corporation; or"</u>

The amendment was read.

On motion of Senator Parker, Floor Amendment No. 1 was tabled by the following vote: Yeas 20, Nays 9.

Yeas: Anderson, Barrientos, Blake, Brooks, Caperton, Edwards, Green, Harris, Henderson, Johnson, Jones, Krier, Leedom, McFarland, Montford, Parker, Parmer, Santiesteban, Uribe, Washington.

Nays: Armbrister, Brown, Glasgow, Lyon, Sarpalius, Sims, Tejeda, Whitmire, Zaffirini.

Absent: Farabee.

Absent-excused: Truan.

Senator Anderson offered the following amendment to the bill:

## Floor Amendment No. 2

Amend H.B. 1431 as follows:

Line 30, add after the word "safekeeping"

, and which are the subject of a valid pledge agreement designating the county as the beneficiary of the pledge agreement

The amendment was read and was adopted viva voce vote.

On motion of Senator Parker and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

## MOTION TO PLACE HOUSE BILL 1431 ON THIRD READING

Senator Parker moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 1431 be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 18, Nays 10. (Not receiving four-fifths vote of Members present)

Yeas: Anderson, Armbrister, Blake, Brooks, Brown, Caperton, Edwards, Harris, Henderson, Johnson, Jones, Krier, Leedom, McFarland, Montford, Parker, Santiesteban, Zaffirini.

Nays: Barrientos, Glasgow, Green, Lyon, Parmer, Sarpalius, Sims, Tejeda, Washington, Whitmire.

Absent: Farabee, Uribe. Absent-excused: Truan.

## (President in Chair)

#### MESSAGE FROM THE HOUSE

House Chamber May 27, 1987

HONORABLE W. P. HOBBY PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

- H.B. 651, Relating to regulation of dispensing opticians; providing a penalty.
- H.B. 2557, Relating to the annexation of land to the Edwards Underground Water District.
- H.B. 1938, Relating to the discharge, suspension, or demotion of a commissioned officer in the Department of Public Safety.
- **H.B.** 47, Relating to payment for overtime work by fire fighters and police officers in certain cities.
- S.C.R. 81, Directing the Texas Education Agency to encourage the provision of programs for students with disabilities in integrated settings.

Respectfully,

BETTY MURRAY, Chief Clerk House of Representatives

## HOUSE BILL 1384 ON SECOND READING

On motion of Senator Caperton and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B.** 1384, Relating to the authority of a city to dissolve a hospital authority. The bill was read second time and was passed to third reading viva voce vote.

#### HOUSE BILL 1384 ON THIRD READING

Senator Caperton moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B.** 1384 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

## COMMITTEE SUBSTITUTE HOUSE BILL 1196 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1196, Relating to requiring the Board of Pardons and Paroles to notify certain local officials before transferring a prisoner to a halfway house.

The bill was read second time and was passed to third reading viva voce vote.

## COMMITTEE SUBSTITUTE HOUSE BILL 1196 ON THIRD READING

Senator Barrientos moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.H.B. 1196 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

## COMMITTEE SUBSTITUTE HOUSE BILL 1948 ON SECOND READING

On motion of Senator Tejeda and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1948, Relating to conflicts of interest of local public officials.

The bill was read second time and was passed to third reading viva voce vote.

# COMMITTEE SUBSTITUTE HOUSE BILL 1948 ON THIRD READING

Senator Tejeda moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.H.B. 1948 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 1285**

Senator Sims called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on H.B. 1285 and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on H.B. 1285 before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sims, Chairman; Edwards, Glasgow, Harris and Leedom.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 2194**

Senator Sims called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on H.B. 2194 and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on H.B. 2194 before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sims, Chairman; Edwards, Glasgow, Harris and Leedom.

## **SENATE RULE 74a SUSPENDED**

On motion of Senator Sarpalius and by unanimous consent, Senate Rule 74a was suspended as it relates to the House amendment to S.B. 522.

## SENATE BILL 522 WITH HOUSE AMENDMENT

Senator Sarpalius called S.B. 522 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

## Floor Amendment - Horn

Amend S.B. 522 on page 2, lines 10 and 11 to read as follows:

\$300,000 for a quarter of 1988, \$240,000 for a quarter of 1989, or \$150,000 for a quarter of 1990, the comptroller shall estimate

The amendment was read.

Senator Sarpalius moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 522 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sarpalius, Chairman; Anderson, Edwards, Lyon and Whitmire.

## **SENATE RULE 103 SUSPENDED**

On motion of Senator Harris and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Economic Development might consider H.B. 1937 at 8:30 a.m. tomorrow.

#### **SENATE RULE 103 SUSPENDED**

On motion of Senator Edwards and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on State Affairs might consider H.B. 1851 at 2:30 p.m. today.

## SENATE RULE 103 SUSPENDED

On motion of Senator Sarpalius and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on State Affairs might consider H.B. 2448 at 2:30 p.m. today.

## **SENATE RULE 103 SUSPENDED**

On motion of Senator Zaffirini and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Education might consider S.R. 645 upon adjournment today.

# **SENATE RULE 103 SUSPENDED**

On motion of Senator Brooks and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Health and Human Services might consider the following bills upon adjournment today:

H.B. 651 H.B. 2051

# RECESS

On motion of Senator Brooks, the Senate at 12:02 p.m. took recess until 2:00 p.m. today.

## **AFTER RECESS**

The Senate met at 2:00 p.m. and was called to order by the President.

## BILLS AND RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bills and resolutions:

H.B. 65	H.B. 697	H.B. 1543	H.B. 2329
H.B. 77	H.B. 710	H.B. 1561	H.B. 2345
H.B. 81	H.B. 715	H.B. 1587	H.B. 2363
H.B. 142	H.B. 737	H.B. 1621	H.B. 2392
H.B. 160	н.в. 798	н.в. 1637	H.B. 2462
H.B. 168	н.в. 806	Н.В. 1678	H.B. 2504
H.B. 175	H.B. 813	н.в. 1685	H.B. 2508
H.B. 203	H.B. 877	H.В. 1709	H.B. 2510
H.B. 249	H.B. 924	<b>Н.В. 1728</b>	H.B. 2515
H.B. 312	H.B. 1018	H.B. 1847	H.B. 2517
H.B. 313	H.B. 1154	H.B. 1870	H.B. 2526
H.B. 359	H.B. 1210	H.B. 1881	H.B. 2528

H.B. 366	H.B. 1231	H.B. 2036	H.B. 2532
H.B. 372	H.B. 1239	H.B. 2087	H.B. 2539
H.B. 449	H.B. 1270	H.B. 2095	H.B. 2542
H.B. 484	H.B. 1293	H.B. 2101	H.B. 2549
H.B. 550	H.B. 1311	H.B. 2106	H.B. 2595
H.B. 575	H.B. 1315	H.B. 2123	H.C.R. 66
H.B. 576	H.B. 1360	H.B. 2136	H.C.R. 80
H.B. 577	H.B. 1363	H.B. 2164	H.C.R. 96
H.B. 669	H.B. 1503	H.B. 2273	H.C.R. 149
H.B. 680			

#### SENATE RESOLUTIONS ON FIRST READING

The following resolutions were introduced, read first time and referred to the Committee indicated:

S.R. 656 by Lyon Health and Human Services Establishing a special interim study committee to study the State's role in the Aid to Families with Dependent Children program.

S.R. 657 by Sarpalius

Natural Resources

Directing the Subcommittee on Agriculture of the Committee on Natural Resources to conduct an interim study on the certification of animal reproduction technicians.

#### HOUSE BILLS AND RESOLUTIONS ON FIRST READING

The following bills and resolutions received from the House were read the first time and referred to the Committee indicated:

- H.J.R. 41, To Committee on Economic Development.
- H.J.R. 60, To Committee on Finance.
- H.B. 47, To Committee on Intergovernmental Relations.
- H.B. 888, To Committee on Economic Development.
- H.B. 651, To Committee on Health and Human Services.
- H.B. 1938, To Committee on State Affairs.
- H.B. 2495, To Committee on Education. H.B. 2557, To Committee on Natural Resources.
- H.C.R. 193, To Committee on Jurisprudence.
- H.C.R. 202, To Committee on Health and Human Services.
- H.C.R. 203, To Committee on Education.
- H.C.R. 211. To Committee on Jurisprudence.
- H.C.R. 212. To Committee on Jurisprudence.
- H.C.R. 213, To Committee on Health and Human Services.
- H.C.R. 215, To Committee on Jurisprudence.

## CONFERENCE COMMITTEE REPORT **HOUSE BILL 1370**

Senator Farabee submitted the following Conference Committee Report:

Austin, Texas May 26, 1987

Honorable William P. Hobby President of the Senate

Honorable Gibson D. "Gib" Lewis Speaker of the House of Representatives Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on H.B. 1370 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

FARABEE VALIGURA
BLAKE MILLSAP
McFARLAND C. EVANS
CAPERTON C. HARRIS
HARRIS McWILLIAMS
On the part of the Senate On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

## MESSAGE FROM THE HOUSE

House Chamber May 27, 1987

HONORABLE W. P. HOBBY PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

- S.B. 85, Relating to the accounting and reporting of state funds. (Amended)
- S.B. 198, Relating to service of civil process on the secretary of state. (Amended)
- S.B. 434, Relating to fees for filing plans relating to protection of the Edwards Aquifer.
- S.B. 982, Relating to the exemption from ad valorem taxation of land used for disposal of dredge material from the Gulf Intracoastal Waterway.
  - S.B. 1071, Relating to the method of returning marked absentee mail ballots.
- S.B. 1130, Relating to the authority of the Texas Air Control Board to issue emergency orders allowing addition, replacement, or repair of facilities damaged by a catastrophic event.
- S.B. 1327, Relating to the administration, powers, duties, and financing of Willacy County Hospital District; granting the authority to issue bonds. (Amended)

The House has concurred in Senate amendments to the following bills by a non-record vote:

H.B. 578 H.B. 723 H.B. 1488 H.B. 1820 H.B. 2031 H.B. 1960 H.B. 2079 H.B. 2400 H.B. 162 H.B. 278 H.B. 306 H.B. 309

The House refused to concur in Senate amendments to H.B. 1866 and has requested the appointment of a Conference Committee to consider the differences between the two Houses: Schlueter, Chairman; Haley, Hammond, Laney and Robnett.

The House refused to concur in Senate amendments to H.B. 23 and has requested the appointment of a Conference Committee to consider the differences between the two Houses: Roberts, Chairman; Parker, Smithee, Hury and Morales.

The House refused to concur in Senate amendments to H.B. 367 and has requested the appointment of a Conference Committee to consider the differences between the two Houses: Wright, Chairman; A. Smith, Patronella, Riley and Shine.

Respectfully,

BETTY MURRAY, Chief Clerk House of Representatives

#### COMMITTEE OF THE WHOLE SENATE

On motion of Senator Brooks, the Senate at 2:05 p.m. agreed to resolve into a Committee of the Whole Senate.

The President appointed Senator Brooks as Chairman of the Committee of the Whole Senate.

## IN LEGISLATIVE SESSION

Senator Brooks called the Senate to order as In Legislative Session at 2:41 p.m.

(President in Chair)

# REPORT OF THE COMMITTEE OF THE WHOLE SENATE

Senator Brooks submitted the following report for the Committee of the Whole Senate:

C.S.H.B. 941 H.B. 942 (Amended)

## COMMITTEE SUBSTITUTE HOUSE BILL 941 ON SECOND READING

On motion of Senator Glasgow and by unanimous consent, the regular order of business and all necessary rules, including the Intent Rule, were suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 941, Relating to an extension of the temporary increase in the state sales and use tax rate.

The bill was read second time and was passed to third reading viva voce vote.

## COMMITTEE SUBSTITUTE HOUSE BILL 941 ON THIRD READING

Senator Glasgow moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.H.B. 941 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

#### MESSAGE FROM THE HOUSE

House Chamber May 27, 1987

# HONORABLE W. P. HOBBY PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

- S.B. 225, Relating to children's conduct in need of supervision.
- S.B. 899, To provide an alternate procedure for the issuance of revenue obligations by regional and junior college districts.
- S.B. 909, Relating to the authority of the Harris-Galveston Coastal Subsidence District to require certain cities to convert to surface water use.
- S.B. 1080, Relating to deadlines for filing certain financial statements and to forms provided by the secretary of state.
- S.B. 1123, Relating to suits to establish paternity and voluntary legitimation, court-ordered support, and to termination of the rights of an alleged or probable father. (Amended)
- S.B. 1144, Relating to approval of certain construction, repair, or rehabilitation projects undertaken by private tenants on lands leased from institutions of higher education.
- S.B. 1177, Relating to regulation of the liquefied petroleum gas industry; providing penalties.
- S.B. 1346, Relating to the qualifications of interpreters for the deaf in certain proceedings.
  - S.B. 1384, Relating to fees for the district clerk's handling of trust funds.
- S.B. 1385, Relating to the disposition of money paid into the registry of certain courts in certain counties, the selection of a special depository for such funds, and the duties of the district clerk in said counties.
- S.B. 1424, Relating to the administration, powers, including eminent domain, bond authority, and repayment of bonds or notes of Grand Prairie Metropolitan Utility and Reclamation District. (Amended)
- S.B. 1437, Relating to the qualifications, election, and meetings of the board of directors of the San Antonio River Authority.

S.B. 1458, Relating to appointment, duties, and compensation of a public defender for Webb County.

Respectfully,

BETTY MURRAY, Chief Clerk House of Representatives

#### HOUSE BILL 942 ON SECOND READING

On motion of Senator Glasgow and by unanimous consent, the regular order of business and all necessary rules, including the Intent Rule, were suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 942, Relating to an extension of the temporary increase in the state motor fuels tax rates.

The bill was read second time.

Senator Glasgow offered the following committee amendment to the bill:

Amend H.B. 942 by striking Section 3 and substituting the following:

SECTION 3. (a) Except as provided by Subsection (b) of this section, this Act takes effect August 31, 1987, at 11:59 p.m.

(b) If H.B. 1237, Acts of the 70th Legislature, Regular Session, 1987, does not become law, this Act has no effect. For purposes of this section, a bill becomes law regardless of its effective date.

The committee amendment was read and was adopted.

On motion of Senator Glasgow and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

## **HOUSE BILL 942 ON THIRD READING**

Senator Glasgow moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 942** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

## CONFERENCE COMMITTEE REPORT SENATE BILL 1108

Senator Farabee submitted the following Conference Committee Report:

Austin, Texas May 27, 1987

Honorable William P. Hobby President of the Senate

Honorable Gibson D. "Gib" Lewis Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 1108 have met and had the same

under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

FARABEE T. SMITH
McFARLAND ROBERTS
WASHINGTON PARKER
GREEN HINOJOSA
BROOKS MORALES
On the part of the Senate On the part of

Senate On the part of the House

## A BILL TO BE ENTITLED AN ACT

relating to a defendant's right to be represented by counsel in certain criminal proceedings and to the duties and compensation of appointed counsel.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS: SECTION 1. Chapter 1, Code of Criminal Procedure, is amended by adding Article 1.051 to read as follows:

Art. 1.051. RIGHT TO REPRESENTATION BY COUNSEL. (a) A defendant in a criminal matter is entitled to be represented by counsel in an adversarial judicial proceeding. The right to be represented by counsel includes the right to consult in private with counsel sufficiently in advance of a proceeding to allow adequate preparation for the proceeding.

(b) For the purposes of this article and Articles 26.04 and 26.05 of this code, "indigent" means a person who is not financially able to employ counsel.

- (c) An indigent defendant is entitled to have an attorney appointed to represent him in any adversary judicial proceeding that may result in punishment by confinement and in any other criminal proceeding if the court concludes that the interests of justice require representation. If an indigent defendant is entitled to and requests appointed counsel, the court shall appoint counsel to represent the defendant as soon as possible.
- (d) An eligible indigent defendant is entitled to have the trial court appoint an attorney to represent him in the following appellate and postconviction habeas corpus matters:

(1) an appeal to a court of appeals;

- (2) an appeal to the Court of Criminal Appeals if the appeal is made directly from the trial court or if a petition for discretionary review has been granted;
- (3) a habeas corpus proceeding if the court concludes that the interests of justice require representation; and
- (4) any other appellate proceeding if the court concludes that the interests of justice require representation.
- (e) An appointed counsel is entitled to 10 days to prepare for a proceeding but may waive the preparation time with the consent of the defendant in writing or on the record in open court. If a nonindigent defendant or an indigent defendant who has refused appointed counsel in order to retain private counsel appears without counsel at a proceeding after having been given a reasonable opportunity to retain counsel, the court, on 10 days' notice to the defendant of a dispositive setting, may proceed with the matter without securing a written waiver or appointing counsel.

(f) A defendant may voluntarily and intelligently waive in writing the right to counsel.

(g) If a defendant wishes to waive his right to counsel, the court shall advise him of the dangers and disadvantages of self-representation. If the court determines that the waiver is voluntarily and intelligently made, the court shall provide the defendant with a statement substantially in the following form, which, if signed by the defendant, shall be filed with and become part of the record of the proceedings:

"I have been advised this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_, 19\_\_\_\_, by the (name of court) Court of my right to representation by counsel in the trial of the charge pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel. (signature of the defendant)"

(h) A defendant may withdraw a waiver of the right to counsel at any time but is not entitled to repeat a proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel. If the defendant withdraws a waiver, the trial court, in its discretion, may provide the appointed counsel 10 days to prepare.

SECTION 2. Article 26.04, Code of Criminal Procedure, is amended to read as follows:

Art. 26.04. COURT SHALL APPOINT COUNSEL. (a) Whenever the court determines [at an arraignment or at any time prior to arraignment] that a defendant [an accused] charged with a felony or a misdemeanor punishable by imprisonment is indigent or that the interests of justice require representation of a defendant in a criminal proceeding [too poor to employ counsel], the court shall appoint one or more practicing attorneys to defend him. An attorney appointed under this subsection shall represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is relieved of his duties by the court or replaced by other counsel.

(b) In determining whether a defendant is indigent, the court shall consider such factors as the defendant's income, source of income, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, spousal income, and whether the defendant has posted or is capable of posting bail.

The court may not deny appointed counsel to a defendant solely because the defendant has posted or is capable of posting bail.

(c) A defendant who requests a determination of indigency and appointment of counsel shall:

(1) complete under oath a questionnaire concerning his financial resources;

(2) respond under oath to an examination regarding his financial resources by the judge or magistrate responsible for determining whether the defendant is indigent; or

(3) complete the questionnaire and respond to examination by the judge or magistrate.

(d) Before making a determination of whether a defendant is indigent, the court shall request the defendant to sign under oath a statement substantially in the following form:

"On this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_, 19\_\_\_\_, I have been advised by the (name of the court) Court of my right to representation by counsel in the trial of the charge pending against me. I certify that I am without means to employ counsel of my own choosing and I hereby request the court to appoint counsel for me. (signature of the defendant)"

(e) If there is a material change in circumstances after a determination of indigency or nonindigency is made, the defendant, the defendant's counsel, or the attorney representing the state may move for reconsideration of the determination.

(f) A written or oral statement elicited under this article or evidence derived from the statement may not be used for any purpose, except to determine the defendant's indigency or to impeach the direct testimony of the defendant. This

subsection does not prohibit prosecution of the defendant under Chapter 37, Penal Code. [In making the determination, the court shall require the accused to file an affidavit, and may call witnesses and hear any relevant testimony or other evidence:

[(b) The appointed counsel is entitled to ten days to prepare for trial, but may waive the time by written notice, signed by the counsel and the accused.]

SECTION 3. Article 26.05, Code of Criminal Procedure, is amended to read as follows:

- Art. 26.05. COMPENSATION OF COUNSEL APPOINTED TO DEFEND. (a) A counsel, other than an attorney with a public defender's office, appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be reimbursed for reasonable expenses incurred with prior court approval for purposes of investigation and expert testimony and shall be paid a reasonable attorney's fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:
- time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, or time spent in a proceeding in which sworn oral testimony is elicited;
- (2) reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires; and
- (3) preparation of an appellate brief to a court of appeals or the Court of Criminal Appeals.
- (b) All payments made under this article shall be paid in accordance with a schedule of fees adopted by formal action of the county and district criminal court judges within each county, except that in a county with only one judge with criminal jurisdiction the schedule will be adopted by the administrative judge for that judicial district.
- (c) Each fee schedule adopted will include a fixed rate, minimum and maximum hourly rates, and daily rates and will provide a form for reporting the types of services performed in each one. No payment shall be made under this section until the form for reporting the services performed is submitted and approved by the court and is in accordance with the fee schedule for that county.
- (d) All payments made under this article shall be paid from the general fund of the county in which the prosecution was instituted or habeas corpus hearing held and may be included as costs of court.
- (e) If the court determines that a defendant has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including any expenses and costs, the court shall order the defendant to pay the amount that it finds the defendant is able to pay.
- [Sec. 1. A counsel appointed to defend a person accused of a felony or a misdemeanor punishable by imprisonment, or to represent an indigent in a habeas corpus hearing, shall be paid from the general fund of the county in which the prosecution was instituted or habeas corpus hearing held, according to the following schedule:
- [(a) For each day or a fractional part thereof in court representing the accused; a reasonable fee to be set by the court but in no event to be less than \$50;
- [(b) For each day in court representing the accused in a capital case, a reasonable fee to be set by the court but in no event to be less than \$250;
- [(c) For each day or a fractional part thereof in court representing the indigent in a habeas corpus hearing, a reasonable fee to be set by the court but in no event to be less than \$50:
- [(d) For expenses incurred for purposes of investigation and expert testimony, a reasonable fee to be set by the court but in no event to exceed \$500;

- [(e) For the prosecution to a final conclusion of a bona fide appeal to a court of appeals or the Court of Criminal Appeals, a reasonable fee to be set by the court but in no event to be less than \$350;
- (f) For the prosecution to a final conclusion of a bona fide appeal to the Court of Criminal Appeals in a case where the death penalty has been assessed, a reasonable fee to be set by the court but in no event to be less than \$500.
- [Sec. 2. The minimum fee will be automatically allowed unless the trial judge orders more within five days of the judgment.
- [Sec. 3: All payments made under the provisions of this Article may be included as costs of court.
- [Sec. 4. An attorney may not receive more than one fee for each day in court; regardless of the number of cases in which he appears as appointed counsel on the same day.]
- SECTION 4. Chapter 26, Code of Criminal Procedure, is amended by adding Article 26.056 to read as follows:
- Art. 26.056. COST OF EMPLOYMENT OF COUNSEL FOR CERTAIN MINORS. If a juvenile has been transferred to a criminal court under Section 54.02, Family Code, and if a court appoints counsel for the juvenile under Article 26.04 of this code, the county that pays for the counsel has a cause of action against a parent or other person who is responsible for the support of the juvenile and is financially able to employ counsel for the juvenile but refuses to do so. The county may recover its cost of payment to the appointed counsel and may recover attorney's fees necessary to prosecute the cause of action against the parent or other person.
- SECTION 5. This Act takes effect September 1, 1987. SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

## **SENATE RULE 74a SUSPENDED**

On motion of Senator Farabee and by unanimous consent, Senate Rule 74a was suspended as it relates to the House amendment to S.C.R. 68.

## SENATE CONCURRENT RESOLUTION 68 WITH HOUSE AMENDMENT

Senator Farabee called S.C.R. 68 from the President's table for consideration of the House amendment to the resolution.

The President laid the resolution and the House amendment before the Senate.

# Committee Amendment - Madla

Amend S.C.R. 68, in the first resolving clause, by striking "Health and Human Services Coordinating Council" and substituting "Office of the Governor".

The amendment was read

Senator Farabee moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the resolution.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.C.R. 68 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the resolution: Senators Farabee, Chairman; Brooks, Uribe, Edwards and Zaffirini.

# SENATE RULE 103 SUSPENDED

On motion of Senator Caperton and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Jurisprudence might consider the following bills at 9:00 a.m. tomorrow:

H.B. 982 H.B. 128 H.B. 2038

## SENATE RULE 103 SUSPENDED

On motion of Senator McFarland and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Criminal Justice might consider the following bills at 9:00 a.m. tomorrow:

H.B. 1420 H.B. 1078

#### MEMORIAL RESOLUTIONS

- S.R. 647 By Uribe: Memorial resolution for Lynne Grigsby and her infant daughter, Brittany.
  - S.R. 650 By Glasgow: Memorial resolution for Charles W. Tindall.
  - S.R. 652 By Glasgow: Memorial resolution for Robert Wayne Harris.
- S.R. 653 By Glasgow: Memorial resolution for Darthuley "Thuley" Malone Duff.
  - S.R. 655 By Truan: Memorial resolution for Dr. Frederick A. Cervantes.

# CONGRATULATORY RESOLUTIONS

- S.R. 646 By Brown: Honoring Colonel James B. Adams.
- S.R. 649 By Farabee: Extending congratulations to Charlene and John Gaither.
  - S.R. 651 By Glasgow: Extending congratulations to Eileen Owens.
  - S.R. 654 By Glasgow: Commending Jo Anne and Jack Moore.

# MOTION TO RECESS AND ADJOURN

On motion of Senator Brooks and by unanimous consent, the Senate agreed to take recess until 8:30 a.m. tomorrow. The Senate further agreed to adjourn at the conclusion of the Local Calendar Session until 9:30 a.m. tomorrow.

#### RECESS

On motion of Senator Brooks, the Senate at 3:20 p.m. took recess until 8:30 a.m. tomorrow.